

## REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH\*

Attorney Docket Number: <b>E2007-700430</b>	Patent Number: <b>7,617,184</b>
Filing Date (or 371(b) or (f) Date): <b>September 21, 2001</b>	Issue Date: <b>November 10, 2009</b>
First Named Inventor: <b>Adam Ferrari</b>	
Title: <b>SCALABLE HIERARCHICAL DATA-DRIVEN NAVIGATION SYSTEM AND METHOD FOR INFORMATION RETRIEVAL</b>	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

\**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature <b>/Matthew H. Grady</b>	Date <b>02/08/2010</b>
Name (Print/Typed) <b>Matthew H. Grady</b>	Registration Number <b>52,957</b>
<p><b>Note:</b> Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.</p>	
<input type="checkbox"/> *Total of _____ forms are submitted.	

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Adam Ferrari  
Serial No: 09/961,131  
Patent No: 7,617,184  
Confirmation No: 4504  
Filed: September 21, 2001  
For: SCALABLE HIERARCHICAL DATA-DRIVEN  
NAVIGATION SYSTEM AND METHOD FOR  
INFORMATION RETRIEVAL

Examiner: Cam Y. T. Truong  
Art Unit: 2169

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**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8(a)**

The undersigned hereby certifies that this document is being electronically filed in accordance with § 1.6(a)(4), on the 8<sup>th</sup> day of February, 2010.

/Matthew H. Grady/  
Matthew H. Grady, Reg. No. 52,957

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Commissioner for Patents

**REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT  
PURSUANT TO WYETH DECISION AND INTERIM PROCEDURE**

Dear Sir:

Patentees hereby request that the Patent Term Adjustment for the above-identified U.S. Patent be reconsidered. It is Patentee's belief that the Patent Term Adjustment on the issued patent (set at 1198 days as stated on the Patent cover sheet, which is attached as Exhibit A) is incorrect and that the Patent Term Adjustment for which the above-identified patent is entitled is **1867 days** based on non-overlapping "B" type delay.

Patentee respectfully submits this request for recalculation of Patent Term Adjustment. It is the Patentee's understanding that no fee is due for this request, however, if there is a fee occasioned by this request, please charge any deficiency to Deposit Account No. 50/2762.

Under 37 CFR § 1.702(a) (hereinafter “Examination Delay”), Patentees are entitled to a period of patent term adjustment which is a period of delay of A type delay of 1389 days due to failure by the U.S. Patent & Trademark Office (“the Office”) to mail an action under 35 USC § 132 not later than 14 months after the actual filing date (hereinafter “14 Month Delay”) (see 37 CFR § 1.702(a)(1)), and a period of patent term adjustment of for failure by the Office to respond to a reply under 35 U.S.C. §132 not later than four months after the date on which the reply was filed (hereinafter “4 month Delay”) (see 37 CFR § 1.702(a)(2)).

Calculations:

14 Month Delay

Filing Date:	September 21, 2001
Target Date First Office Action:	November 21, 2002
Actual Date First Office Action:	December 15, 2005
Delay:	1120 days (Agrees with PTO)

4 Month Delay

Response Filed:	October 6, 2006
Target Reply:	February 6, 2007
Actual Reply:	November 2, 2007
Delay:	269 days (Agrees with PTO)

Accordingly, as the Office has concluded, Patentees are entitled to a total period of Examination delay under 37 CFR § 1.702(a) of 1389 days (the sum of 1120 days + 269 days).

In addition to the patent term adjustment due to Examination Delay according to 37 CFR § 1.702(a), Patentees respectfully submit that they are also entitled to a period of patent term adjustment under 37 CFR § 1.702(b) due to failure of the Office to issue a patent within three years after the date the corresponding application was filed under 35 USC § 111(a). The period of adjustment under 37 CFR § 1.702(b) is the number of days in the period beginning on the date after the date that is three years after the date on which the application was filed under 35 USC 111(a) and ending on the date the patent issued, but not including the number of days in the period beginning on the date on which a request for continued examination (RCE) of the

application under 35 USC § 132(b) was filed and ending on the date the patent was issued (see 37 CFR 1.702(b)(1)).

Calculations:

Filing Date:	September 21, 2001
Target Issue Date:	September 21, 2004
RCE Filed:	May 11, 2009
Delay:	1692 days (*Difference from USPTO Calculation of one day)

Since the Office failed to issue the above-identified patent until November 10, 2009, which is more than three years after the filing date of the application under 35 USC § 111(a), Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is three years after the filing date of the application, and ending on the date that is the day before the RCE was filed. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 1692 days.

With respect to the above-referenced application, the total period of Office Delay is the sum of the period of 14 Month Delay, the period of 4 Month Delay and the period of Three Year Delay *to the extent such periods of delay are not overlapping*.

Overlap Calculation:

Overlap 14 mo. and B delay:	September 21, 2004
End Overlap 14 mo. and B delay:	December 15, 2005
Overlap:	450 days
Overlap 4 mo. and B Delay:	February 6, 2007
End Overlap 4 mo. and B Delay:	November 2, 2007
Overlap:	269 days
Total:	719 days

Accordingly, Patentees submit that the total period of Office Delay pursuant to the Wyeth decision is 2362 days, which is the sum of the period of Examination Delay (1389 Days) and the period of Three Year Delay (1692 days) minus the Overlapping Delay (719 days).

Under 37 CFR § 1.703(f), to calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay as specified in 37 CFR § 1.704. The USPTO has calculated the period of Applicant delay to be 495 days (see Exhibit B). Patentee agrees with the USPTO calculation with one exception: Patentees note a difference in the Applicant's calculation for the delay attributable to 37 C.F.R. 1.704(c)(10) of one day (Filing of an Amendment after Notice of Allowance). However, adjustment under the Interim Procedures limits review to B type delay correction, thus Applicant has used the 495 figure for Applicant's delay. Thus, the total delay pursuant to the Wyeth Decision should be 1867 days, (2362 days – 495 days).

PTO Calculation:

July 2, 2009 – Amendment after Notice of Allowance: 82 days

Patentee Calculation:

Amendment after Allowance: July 2, 2009

Mail Response to 312 Amendment: September 21, 2009

Total: 81 days (difference 1 day)

**CONCLUSION**

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. If any issues are presented by this request, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an accompanying payment, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,  
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Docket No.: E2007-700430  
Date: February 8, 2010